

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

| | | |
|----------------------------------|---|----------------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | 8:05CR244 |
| |) | |
| v. |) | REPORT AND RECOMMENDATION |
| |) | AND |
| TOMMY C. WHITESEL, |) | ORDER |
| |) | |
| Defendant. |) | |

At the conclusion of the hearing on September 16, 2005, on the defendant's motion to dismiss (Filing No. 14), I stated my conclusions on the record and my decision to recommend that the motion to dismiss be denied. In accordance with that announcement,

IT IS RECOMMENDED to the Honorable Joseph F. Bataillon, Chief Judge, that the motion to dismiss, Filing No. 14, be denied in all respects.

FURTHER, IT IS ORDERED:

1. The clerk shall cause an expedited transcript of the hearing to be prepared and filed.
2. Pursuant to NECrimR 57.3 any objection to this Report and Recommendation shall be filed with the Clerk of the Court within ten (10) days after the transcript is available to counsel for reading in the clerk's office. Failure to timely object may constitute a waiver of any such objection. The brief in support of any objection shall be filed at the time of filing such objection. Failure to file a brief in support of any objection may be deemed an abandonment of the objection.

Dated this 23rd day of September, 2005.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge